

Supreme Court, U. S.

FILED

MAY 23 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-1401

SECURITY STORAGE COMPANY OF WASHINGTON,
a Corporation, et al., *Petitioners,*

v.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD,
Respondent.

On Petition for a Writ of Certiorari to the
District of Columbia Court of Appeals

BRIEF OF PETITIONERS IN REPLY

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COUNTER-STATEMENT OF THE CASE

No temporary restraining order was entered.

COUNTER-ARGUMENT

A. Neither the trial court nor the Court of Appeals afforded a "meaningful" hearing to petitioners' claim that respondent promulgated a rule without complying with the D.C. APA.

Respondent contends that the trial court afforded petitioners a "hearing" on their allegations of D.C. APA violations. This contention is without basis. The order granting the preliminary injunction was clearly based on statutory construction. (Cert. Pet. 13a-26a)

The trial court expressly told the parties in a letter dated September 25, 1975 that "This ruling was made without any regard to the District of Columbia Administrative Procedure Act." (Pet. Reply, Appendix 1a). Respondent contends that the petitioner did not raise the invalid rule-making

argument in the Court of Appeals. This is incorrect.

The Court of Appeals heard only the statutory construction issue because Respondent, the Appellant below, raised only that issue in its appeal. Petitioners, the Appellees below, could only address themselves to the limited issue of statutory construction and the appropriateness of the granting of the preliminary injunction because that was the posture of the interlocutory appeal. Petitioners' basic problem arises from the fact that the Court of Appeals decided an issue that petitioners had no opportunity to argue.

Petitioners did raise the issue of a denial of a hearing on the allegations of illegal rule-making in their petition for reconsideration after the Court of Appeals had reversed on the merits. The Court of Appeals, however, denied petitioners' re-

quest for a rehearing, thereby depriving petitioners of their constitutional right to have their allegations of unconstitutional and illegal rule-making heard.

Since no hearing has been afforded petitioners on their allegations of D.C. APA violations, respondent's contention that it did not violate the D.C. APA is inappropriate. The issue must be determined in a judicial hearing, to which petitioners have a constitutional right.

It is sufficient to state here that petitioners' allegations are not frivolous. Petitioners stated in their petition for reconsideration that the respondent engaged in rule-making by determining how and when §46-303c was to be implemented. The differing opinions of the trial court and the Court of Appeals reveal that the statute was not amendable to a "mechanical reading".

Respondent had to interpret the statute in order to implement it.

It is that interpretation which petitioners allege to be violative of the D.C. APA and which was allegedly thereafter applied to deprive petitioners of property without due process.

B. The Court of Appeals deprived petitioners of their due process right to a hearing on the issue of whether the District Unemployment Compensation Board violated the District of Columbia Administrative Procedure Act.

1. Petitioners have a right under the due process clause of the fifth amendment to a hearing on their allegation that they were deprived of property by unauthorized administrative action in violation of due process of law.

Respondent confuses the issue in this case by arguing that a violation

of the District of Columbia Administrative Procedure Act (hereinafter D.C. APA) would not injure petitioners' constitutional rights. Petitioners do contend that their allegations, if proved, would establish an unconstitutional deprivation of property by unauthorized administrative action.

Respondent's brief argues that a citizen has no constitutional right to a hearing where an administrative body has confiscated his property without following statutorily mandated procedures. The respondent's position is inconsistent with the decisions of this Court.

Goldberg v. Kelly, 397 U.S. 254 (1970) and the line of cases which followed it established the constitutional rule that no person may be deprived of

a statutory entitlement without at least minimal procedural safeguards. In cases involving violations of the Federal Administrative Procedure Act, the Court has carefully scrutinized administrative actions and has required strict adherence to administrative procedures. Morton v. Ruiz, 415 U.S. 199 (1974); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969). The Court's approach to these cases is a logical extension of the Goldberg rationale; judicial scrutiny is intended to ensure administrative compliance with the minimal procedural safeguards which the legislature has deemed essential to the protection of liberty and property interests.

Thus, the due process clause necessarily protects petitioners'

right to have their allegations heard in court, for the opportunity to be heard "works by itself to protect against arbitrary deprivations of property." Fuentes v. Shevins, 407 U.S. 67, at 81 (1972). In the absence of this due process protection, government agencies would be free arbitrarily to confiscate property without fear of judicial reprimand.

Any distinctions between the Federal Administrative Procedure Act and the D.C. APA in no way diminish petitioners' constitutional right to be heard. The District of Columbia, having established its own administrative procedures, must abide by them. If it does not, the District's citizens have a due process right to contest the District's illegal confiscation of property in court. District of Colum-

bia v. Green, 310 A.2d 848 (D.C.App., 1973).

2. Petitioners' right to be heard is essentially compelling because its allegations, if proved, would establish an unconstitutional deprivation of property without due process of law.

Petitioners have a constitutional right to be heard regardless of the constitutional significance of their allegations below. In this case, however, petitioners' right to hearing is especially compelling because respondent has allegedly deprived petitioners of a statutory entitlement without following statutory procedure. Such an unauthorized confiscation of a property interest is inconsistent with the due process clause.

This Court has emphasized the importance of a hearing in cases where

constitutional claims are made. Reynolds v. Cochran, 365 U.S. 526 (1961). Petitioners have shown the constitutional significance of their allegation in their petition for certiorari and are entitled to this Court's special consideration.

Respondent relies on Washington v. Davis, 426 U.S. 279 (1976) to rebut the constitutional nature of petitioners' claim. Davis, however, involved the constitutional and statutory validity of a procedural rule. Petitioners in the case at bar have accepted the validity of the D.C. APA and have alleged that respondent engaged in invalid rule-making in violation of the APA. Respondent's invalid rule was thereafter applied to deprive petitioners of their statutory entitlement.

Respondent was constitutionally bound to follow the D.C. APA. Any contrary argument would strip the due process clause of its vitality by, in effect, authorizing the state to seize property in disobedience of its own laws.

Petitioners' right to be heard is thus based on the due process clause and is emphasized by the constitutional basis of its claims.

CONCLUSION

The Court of Appeals deprived petitioners of their due process right to a hearing on substantial issues of constitutional significance. This Court is respectfully urged to issue a writ of certiorari.

Respectfully submitted,

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APPENDIX

1-a

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Washington, D.C. 20001

Paul F. McArdle
Judge

September 25, 1975

Gilbert Hahn, Jr., Esquire
700 Colorado Building
Washington, D. C. 20005

Bill L. Smith, Esquire
District Unemployment
Compensation Board
6th & Pennsylvania
Avenue, N. W.
Washington, D. C. 20001

Re: Security Storage Co. v. D.C.U.C.B., CA 7542-75

Gentlemen:

This is to advise that after reviewing the entire file and having heard your oral argument this morning, I am preparing to grant the plaintiff's Motion for Preliminary Injunction based on the statutory authority under D.C. Code §46-303(c)(4)(B), § 46-301(8)(C)(i) and the District of Columbia Unemployment Compensation Board Regulation No. 205.7. This ruling was made without any regard to the District of Columbia Administrative Procedure Act.

For the reasons set forth above, the plaintiff will please prepare proposed findings of fact and conclusions of law.

Very truly yours,

/s/ Paul F. McArdle
Paul F. McArdle

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